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## **ONLINE MASTER EXCHANGE AGREEMENT**

### **(With Qualified Intermediary)**

THIS ONLINE MASTER EXCHANGE AGREEMENT (this "Agreement"), dated October \_\_, 2000 ("Effective Date") is by and between a \_\_\_\_\_ ("Taxpayer"), with an address of \_\_\_\_\_ and a United States Taxpayer Identification Number of \_\_\_\_\_, and e-LKE.com, LLC ("Intermediary"), a Colorado limited liability company, 1772 Platte Street, Denver, CO 80202.

### **Recitals**

A. Taxpayer has entered or will enter into agreements ("Sale Agreements") with various parties ("Purchasers") in which Taxpayer agrees to sell and Purchasers agree to purchase Taxpayer's interests ("Relinquished Taxpayer Interests") in certain personal property ("Relinquished Property"). Taxpayer also has entered or will enter into agreements ("Purchase Agreements") with various parties ("Sellers") in which Taxpayer agrees to purchase and Sellers agree to sell interests ("Replacement Taxpayer Interests") in like-kind property ("Replacement Property").

B. Taxpayer desires to appoint Intermediary, acting as a "qualified intermediary" pursuant to the regulations under section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), to acquire Relinquished Taxpayer Interests, acquire Replacement Taxpayer Interests, convey Relinquished Taxpayer Interests to Purchasers and convey Replacement Taxpayer Interests to Taxpayer, in transactions qualifying as deferred like-kind exchanges under Code section 1031 and the applicable regulations.

C. Taxpayer and Intermediary desire to utilize Intermediary's World Wide Web site ("Intermediary's Site") to carry out and process online the like-kind exchange transactions contemplated by this Agreement.

### **Agreement**

In consideration of these premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Definitions:**

"Additional Proceeds" mean the amounts, if any, that Purchasers pay to Intermediary with respect to non-Taxpayer interests in Relinquished Property, together with any other funds deposited into the Additional Proceeds Account pursuant to this Agreement.

“Additional Proceeds Account” means a non-restricted account created by Intermediary for the term of this Agreement, into which Additional Proceeds are deposited; on which interest or other earnings are credited to Taxpayer pursuant to Section 6 below; and into which Net Taxpayer Proceeds may, in circumstances consistent with Code Section 1031 and applicable regulations, be payable pursuant to Section 3(a)(5).

“Exchange Period” means, with respect to each Sale Period during the term of this Agreement, the period beginning on the first day of that Sale Period and ending at midnight on the earlier of the 180th day thereafter or the due date (including extensions) for Taxpayer’s federal income tax return for the taxable year in which Relinquished Property is transferred.

“Identification Period” means, with respect to each Sale Period during the term of this Agreement, the period beginning on the first day of that Sale Period and ending at midnight on the 45th day thereafter.

“Net Taxpayer Proceeds” mean the amounts that Purchasers pay to Intermediary for Relinquished Taxpayer Interests, together with interest or other earnings thereon.

“Net Taxpayer Proceeds Account” means a restricted account established by Intermediary on behalf of Taxpayer (which may be part of a deposit, trust or escrow account at the bank or other financial institution utilized by Intermediary (“Intermediary’s Bank”) to hold funds of Taxpayer pursuant to this Agreement), one per Sale Period during the term of this Agreement or as otherwise directed in writing by Taxpayer from time to time, for each category of Relinquished Property with respect to which Taxpayer desires to make deferred like-kind exchanges. All Relinquished Taxpayer Interests transferred and Replacement Taxpayer Interests acquired with respect to a single Net Taxpayer Proceeds Account shall be accounted for as a single, separate exchange for purposes of Code section 1031.

“Sale Period” means, with respect to each Net Taxpayer Proceeds Account, the period from the first day through the 15<sup>th</sup> day of the calendar month, or from the 16<sup>th</sup> day through the last day of the calendar month (as the case may be).

“Termination Date” means, with respect to a given Net Taxpayer Proceeds Account, the earliest of: (i) the date on which Taxpayer receives the last of all Replacement Taxpayer Interests to which Taxpayer is entitled under this Agreement; (ii) if Taxpayer has not identified any Replacement Taxpayer Interests during the Identification Period, the next business day after the expiration of the Identification Period; (iii) the next business day after the expiration of the Exchange Period; or (iv) upon receipt by Intermediary of written notice signed by Taxpayer, advising that Intermediary will be unable to acquire any identified Replacement Taxpayer Interests due to the occurrence, after the

end of the Identification Period, of a material and substantial contingency that relates to the deferred exchange, is provided for in writing and is beyond the control of Taxpayer and any disqualified person (as defined in Treas. Reg. section 1.1031(k)-1(k)) other than the person obligated to transfer the identified Replacement Taxpayer Interests to Taxpayer.

**2. Term:** The term of this Agreement shall begin on the Effective Date and end 45 days after notice of termination is given to the non-terminating party. Notwithstanding termination of this Agreement, any representations, warranties and indemnities, as well as any obligations with respect to amounts owing to either party under this Agreement as of the Termination Date, shall survive termination of this Agreement.

**3. Net Taxpayer Proceeds Accounts and Additional Proceeds Account:**

**(a) Net Taxpayer Proceeds Accounts.**

(1) Unless otherwise directed by Taxpayer, Intermediary shall establish Net Taxpayer Proceeds Accounts, one on the first day of each calendar month and one on the 16<sup>th</sup> day of each calendar month during the term of this Agreement, for each category of Relinquished Property with respect to which Taxpayer wishes to effect like-kind exchanges. Intermediary shall designate a separate account name and number for each such Net Taxpayer Proceeds Account, using Taxpayer's name and the date of creation (e.g., the "APC 01/01/2000 Account" or the "APC 01/16/2000 Account"). Intermediary shall make available to Taxpayer, with respect to each Net Taxpayer Proceeds Account, a statement detailing deposits into and disbursements from each Net Taxpayer Proceeds Account, listing date of deposit or disbursement, payor/payee and amount. Such statement shall be made available to Taxpayer's authorized representatives on Intermediary's Site and shall be updated at least daily.

(2) Intermediary, through Intermediary's Bank, shall accept and deposit into each Net Taxpayer Proceeds Account all Net Taxpayer Proceeds received with respect to Relinquished Taxpayer Interests transferred during the Sale Period with respect to that Net Taxpayer Proceeds Account. Intermediary also shall credit to each Net Taxpayer Proceeds Account, at the time of closing of the account, the interest or other earnings credited to Taxpayer pursuant to Section 6 below on the Net Taxpayer Proceeds contained in that Net Taxpayer Proceeds Account. Intermediary shall not disburse any funds of that Net Taxpayer Proceeds Account to pay for Replacement Taxpayer Interests received by Taxpayer during the Sale Period with respect to that Net Taxpayer Proceeds Account.

(3) Intermediary, through Intermediary's Bank, shall disburse Net Taxpayer Proceeds from a Net Taxpayer Proceeds Account for acquisition of Replacement Taxpayer Interests, as described in Section 5 below. Funds in the Net Proceeds Account shall be applied solely for the purposes of: (i) paying transactional expenses that relate to the transfer of Relinquished

Taxpayer Interests or to the acquisition of Replacement Taxpayer Interests and that appear under local standards in the typical closing statement as the responsibility of a buyer or seller (within the meaning of Treas. Reg. section 1.1031(k)-1(g)(7)); (ii) acquiring Replacement Taxpayer Interests in accordance with the applicable Purchase Agreement(s) (including making any required earnest money deposits); and (iii) subject to the conditions set forth in Section 3(a)(4) below, disbursement to Taxpayer or as Taxpayer may direct. Unless Taxpayer provides written instructions to Intermediary to the contrary, Taxpayer hereby authorizes Intermediary to disburse funds from the Net Proceeds Account in accordance with the provisions of this Section 3(a)(3), Section 3(a)(6) below and Section 5 below, always subject to the conditions set forth in Section 3(a)(4) below.

(4) Each Net Taxpayer Proceeds Account shall be a restricted account, and Taxpayer shall have no right to pledge, borrow or otherwise obtain the benefits of Net Taxpayer Proceeds (including any interest or other earnings credited to Taxpayer pursuant to Section 6 below), except as provided in Section 5 below and to the extent not inconsistent with Treas. Reg. section 1.1031(k)-1(g)(6). This provision shall apply notwithstanding any inconsistent instruction given by Taxpayer to Intermediary on or prior to the Termination Date and notwithstanding any decision by Taxpayer not to pursue a deferred exchange or to abandon the transactions contemplated by this Agreement, and this provision shall not be amendable by the parties.

(5) Net Taxpayer Proceeds and interest or earnings credited to Taxpayer with respect thereto under Section 6 below contained in a Net Taxpayer Proceeds Account that are not disbursed by Intermediary in accordance with Section 5(a) or (b) below, shall be transferred by Intermediary to the Additional Proceeds Account as soon as permitted under Treas. Reg. section 1.1031(k)-1(g)(6).

(6) Any disbursement hereunder directed by Taxpayer shall (if otherwise permitted under the terms of this Agreement) be made by Intermediary's directing Intermediary's Bank to issue a fedwire transfer or check, as designated by Taxpayer in an electronic writing, in accordance with the procedures established in Intermediary's Website (a "Disbursement Authorization"). If a Disbursement Authorization requests disbursement of funds on the day the Disbursement Authorization is sent, and if the Disbursement Authorization is received by Intermediary before 12:00 p.m. noon, Central Time on the day that funds are directed to be disbursed, the Intermediary shall be obligated to initiate the wire transfer of such funds during the period that LaSalle National Bank, Intermediary's Bank, may initiate wire transfers on the day that the Disbursement Authorization is received by Intermediary; if such a Disbursement Authorization is received by Intermediary after such time, then Intermediary shall use commercially reasonable efforts to initiate the wire transfer before the wire transfer deadline for that day, but it shall not be obligated to do so. Notwithstanding the foregoing, Intermediary shall

not be required to initiate a wire transfer on the day directed by Taxpayer if that day is a bank holiday at LaSalle National Bank, Intermediary's Bank. Intermediary in the Disbursement Authorization shall indicate Taxpayer's name and Net Proceeds Account number, Intermediary's Bank account name and number, the name and account number of the recipient, the name and ABA routing number of the recipient's bank and the amount to be transferred to the recipient. Intermediary is expressly authorized to rely conclusively on the Disbursement Authorization as the authorized instructions of Taxpayer, and on the accuracy of the content of such instructions, including the account numbers and ABA routing numbers identified in the Disbursement Authorization, which are the sole responsibility of Taxpayer, and Intermediary may process such instructions in reliance on the Disbursement Authorization. Intermediary shall forward any Disbursement Authorization to Intermediary's Bank immediately following receipt of the Disbursement Authorization.

**(b) Additional Proceeds Account.**

(1) Intermediary also shall establish an Additional Proceeds Account for Taxpayer. Intermediary shall designate a separate name and account number for the Additional Proceeds Account, using Taxpayer's name and the title "Additional Proceeds Account." Intermediary shall electronically make available to Taxpayer, a statement updated daily detailing deposits into and disbursements from the Additional Proceeds Account, listing date of transaction, payor/payee and amount.

(2) The portion of each check or wire transfer received by Intermediary that is designated by Taxpayer as Additional Proceeds shall be deposited by Intermediary into the Additional Proceeds Account. Intermediary shall deposit into the Additional Proceeds Account any interest or other earnings credited to Taxpayer pursuant to Section 6 below on Additional Proceeds, as well as uncommitted or unused Net Taxpayer Proceeds, (in accordance with Section 3(a)(5)) above. Taxpayer may deposit additional funds into the Additional Proceeds Account from time to time to cover expected disbursements from the Additional Proceeds Account.

(3) Pursuant to Taxpayer's Disbursement Authorization, Intermediary, through Intermediary's Bank, shall disburse Additional Proceeds from the Additional Proceeds Account.

**4. Assignments of Rights:** For value received, Taxpayer hereby assigns to Intermediary, and Intermediary accepts assignment of, Taxpayer's rights, but not Taxpayer's obligations, with respect to Sale Agreements covered by this Agreement (as and when those Sales Agreements come into existence), and Intermediary shall notify each Purchaser of that assignment on or before the date of transfer of Relinquished Property to that Purchaser. For value received, Taxpayer hereby assigns to Intermediary, and Intermediary accepts assignment of, Taxpayer's rights, but not Taxpayer's obligations, with respect to Purchase Agreements covered by this Agreement (as and when those

Purchase Agreements come into existence), and Intermediary shall use reasonable commercial efforts to, but shall have no obligation to, notify each Seller of that assignment on or before the date of transfer of Replacement Property to Taxpayer. These assignments are solely for purposes of effecting deferred like-kind exchanges under Code section 1031 and the applicable regulations. Sale Agreements and Purchase Agreements shall be considered to be covered by this Agreement if deposit or disbursement of Net Taxpayer Proceeds into or out of a Net Taxpayer Proceeds Account is made with respect to them in accordance with this Agreement as of the time of transfer.

## **5. Acquisition and Conveyance of Replacement Taxpayer Interests:**

### **(a) Acquisition of Replacement Taxpayer Interests In General.**

(1) Intermediary shall acquire and transfer Replacement Taxpayer Interests in Replacement Property as provided in this Section 5 pursuant to Taxpayer's designations and assignments in accordance with Treas. Reg. section 1.1031(k)-1(g)(4).

(2) Replacement Property shall be paid for by Intermediary at the purchase price or prices, and upon such other terms and conditions, including but not limited to conditions of title, as specified in the applicable Purchase Agreements, and Replacement Taxpayer Interests shall be conveyed to Taxpayer in exchange for Relinquished Taxpayer Interests.

(3) Notwithstanding that Intermediary will not actually take title to Relinquished Property or Replacement Property, Intermediary shall be deemed to have taken title to and exchanged Relinquished Taxpayer Interests for Replacement Taxpayer Interests within the meaning of Treas. Reg. section 1.1031(k)-1(g)(4)(iv). The foregoing notwithstanding, Intermediary shall not be considered to hold title to or to be a mortgagee in possession of or owner or operator of Relinquished Property or Replacement Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other similar federal, state or local environmental laws or regulations, and Intermediary shall not be deemed at any time to acquire legal or equitable title to any Relinquished Property or Replacement Property.

### **(b) Acquisition of Replacement Taxpayer Interests Within the Identification Period.**

(1) Pursuant to Taxpayer's instructions, Intermediary shall pay for Replacement Taxpayer Interests in Replacement Property received by Taxpayer after the Sale Period for a Net Taxpayer Proceeds Account, but within the applicable Identification Period, using Net Taxpayer Proceeds deposited into that Net Taxpayer Proceeds Account to the extent of those funds. Pursuant to Taxpayer's instructions, Intermediary shall use Additional Proceeds to pay for non-Taxpayer interests in Replacement Property, and Intermediary shall use Additional Proceeds to pay for

Replacement Taxpayer Interests to the extent that the balance in the applicable Net Taxpayer Proceeds Account is insufficient to pay for those Replacement Taxpayer Interests.

(2) Any Net Taxpayer Proceeds that are unused under the procedure set forth in this Section 5(b) shall be subject to commitment, within the applicable Identification Period, under the procedures set forth in Section 5(c) below.

**(c) Acquisition of Replacement Taxpayer Interests After the Identification Period.**

(1) In addition to the Replacement Taxpayer Interests acquired by Intermediary pursuant to Section 5(b) above, Taxpayer shall have the right (but not the obligation) to identify, in accordance with the identification rules contained in Treas. Reg. section 1.1031(k)-1(c), Replacement Property in which Taxpayer desires to acquire Replacement Taxpayer Interests, at any time and from time to time during an Identification Period, to be paid for by Intermediary with Net Taxpayer Proceeds from the applicable Net Taxpayer Proceeds Account within the Exchange Period.

(2) In the event that Taxpayer identifies, during the Identification Period, Replacement Property in which Taxpayer desires to acquire Replacement Taxpayer Interests, Intermediary shall pay for those Replacement Taxpayer Interests received by Taxpayer within the applicable Exchange Period as provided in the applicable Purchase Agreements, using Net Taxpayer Proceeds from the applicable Net Taxpayer Proceeds Account(s), subject to the ordering rules contained in Section 5(d) below. Intermediary shall use Additional Proceeds to pay for non-Taxpayer interests in Replacement Property and to pay for Replacement Taxpayer Interests to the extent that the balance in the applicable Net Taxpayer Proceeds Account is insufficient to pay for those Replacement Taxpayer Interests.

**(d) Ordering of Replacement Property Acquisitions:** In the event that Replacement Taxpayer Interests in Replacement Property could be purchased with funds from two or more Net Taxpayer Proceeds Accounts because of adequate available funds in those accounts, Taxpayer hereby directs Intermediary to purchase those Replacement Taxpayer Interests with available funds in the following priority:

- (1) From the least recent Net Taxpayer Proceeds Account for which the Exchange Period has not yet expired (as of the date of the transfer of the Replacement Property) and for which an identification of the Replacement Property has been made.
- (2) From the least recent Net Taxpayer Proceeds Account for which the Identification Period has not yet expired (as of the date of the transfer of the Replacement Property).



- (3) Notwithstanding Section 5(d)(1) or (2) above, from the Net Taxpayer Proceeds Account specified by Taxpayer, if so specified by Taxpayer prior to receiving the Replacement Property. Intermediary shall accept Taxpayer's determination as to whether that specification by Taxpayer is timely under the preceding sentence.

**6. Interest or Other Earnings on Net Taxpayer Proceeds and Additional Proceeds:** Intermediary shall credit to Taxpayer interest or other earnings, both on the balance in the Net Taxpayer Proceeds Account and on the balance in the Additional Proceeds Account. Intermediary shall invest and reinvest the balance in the Net Taxpayer Proceeds Account and the balance in the Additional Proceeds Account at an interest rate computed in accordance with Exhibit A attached to this Agreement, unless written instructions, signed by an authorized agent or representative of Taxpayer, are received by Intermediary indicating otherwise. Intermediary shall not be liable for interest or other earnings on the balance in the Net Taxpayer Proceeds Account or the balance in the Additional Proceeds Account, except as specifically provided pursuant to this Section 6. Taxpayer and Intermediary hereby acknowledge and agree that, for federal income tax purposes, any interest or other earnings credited to Taxpayer on funds in a Taxpayer Net Proceeds Account or in an Additional Proceeds Account will be income attributed to Taxpayer, and that Intermediary will report to the Internal Revenue Service any such income. Under penalties of perjury, Taxpayer hereby certifies that (i) Taxpayer's address is as set forth in Section 10 below; (ii) Taxpayer's United States Taxpayer Identification Number is as set forth in Section 10 below; and (iii) Taxpayer is not subject to backup withholding.

**7. Relationship of Parties and Indemnification:**

(a) Taxpayer intends that the transactions contemplated by this Agreement will qualify for favorable treatment under Section 1031 of the Code and the regulations thereunder. However, Taxpayer acknowledges and agrees that Intermediary shall not be responsible for any particular tax consequences (including any responsibility for filing and the payment of any tax) resulting from Intermediary's activities or responsibilities under this Agreement, and that Intermediary makes no warranties or representations that its actions, or any exchanges made pursuant to this Agreement, are in compliance with the provisions of Code section 1031 or any other provisions of the Code or any other applicable laws or regulations. Notwithstanding any provision of this Agreement to the contrary, Intermediary shall not be in default under this Agreement and shall not be liable for any damages, losses, costs or expenses incurred by Taxpayer if: (i) Intermediary fails to take any steps to locate, identify or negotiate for the acquisition of Replacement Taxpayer Interests, a Purchase Agreement or financing to acquire Replacement Taxpayer Interests; (ii) any Replacement Taxpayer Interests fail to qualify as "like-kind" property for purposes of Code section 1031; or (iii) the exchange transactions contemplated, attempted or consummated by Taxpayer otherwise fail, for any reason, to afford Taxpayer the benefits of Code section 1031, unless the failure is caused by the gross negligence or willful misconduct of Intermediary. **Taxpayer represents and warrants to Intermediary**

that Taxpayer has consulted with and is relying on its own advisors with regard to the legal and tax consequences of the transactions contemplated by this Agreement. Taxpayer acknowledges that it is not relying upon any representation of or information obtained from Intermediary or any of its agents with respect to such legal or tax consequences, and that Intermediary has given no tax or other legal advice to Taxpayer with respect to any matter. Intermediary shall have no responsibility for any of the tax incidences of the transactions contemplated by this Agreement, including compliance with any timing requirements under this Agreement or under Code section 1031 or the applicable regulations. Taxpayer represents and warrants to Intermediary that any Replacement Taxpayer Interests identified by Taxpayer are of "like kind," within the meaning of Code section 1031, with the applicable Relinquished Taxpayer Interests and to be held for a purpose qualifying under Code section 1031.

(b) Taxpayer acknowledges and agrees that Intermediary is acting, pursuant to this Agreement, solely as Taxpayer's agent for the limited purpose of facilitating deferred like-kind exchanges by Taxpayer. Intermediary's duties are only such as are specifically provided in this Agreement, and Intermediary shall incur no liability whatsoever to Taxpayer or any other party, except for gross negligence or willful misconduct in carrying out those duties. Intermediary shall have no responsibility under this Agreement other than to follow in good faith the instructions provided by Taxpayer consistent with the provisions of this Agreement. Whenever reference is made in this Agreement to Intermediary's status as Taxpayer's agent, the parties intend that relationship to exist as a matter of statutory and common law to the fullest extent possible, but in no event shall the agency relationship be construed to extend beyond that which is permissible under the safe harbor for deferred like-kind exchanges involving qualified intermediaries described in Treas. Reg. section 1.1031(k)-1(g)(4). In connection with any demand, claim or complaint made upon Intermediary, Intermediary may notify such person or persons that it deems appropriate that it is acting under this Agreement solely as Taxpayer's agent for the limited purpose of facilitating deferred like-kind exchanges by Taxpayer. Intermediary may from time to time, with or without notice to Taxpayer or any other person, appoint a nominee or agent to perform any or all of its obligations under this Agreement. Notwithstanding that appointment, Intermediary shall be responsible for any such nominee or agent, and shall remain liable for the performance of its obligations under this Agreement.

(c) Taxpayer represents and warrants to Intermediary that Taxpayer is duly authorized to enter into this Agreement and to consummate all of the transactions contemplated by this Agreement. Intermediary shall be entitled to rely in good faith upon any electronic or non-electronic writing, telegram, telex or teletype message, resolution, notice, consent, waiver, certificate, letter, cablegram, statement, order, request or other document or conversation by telephone or otherwise reasonably believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper person or persons. Upon request, Taxpayer shall provide Intermediary with a copy of any document referenced above. Intermediary shall not be required to inquire into the propriety of any direction given under this Agreement. Intermediary shall be fully

justified in failing or refusing to take any action hereunder with respect to any conflicting demands or claims (including any demands or claims conflicting with any provision of this Agreement) of which Intermediary may become aware regarding the rights of any of the parties to this Agreement or of any money, property or instruments affected by this Agreement unless Intermediary shall first be indemnified or furnished with sufficient funds to its reasonable satisfaction by Taxpayer against any and all liability and expense that may be incurred by Intermediary by reason of taking or continuing to take any such action. Intermediary shall not be obligated to pay any money under this Agreement or to prosecute or defend any legal proceeding involving this Agreement or any proceeds covered by this Agreement unless it shall elect to do so and be furnished by Taxpayer with sufficient funds or be indemnified to its reasonable satisfaction. If Intermediary is served with process or notice of legal proceedings or any other matter concerning this Agreement or any proceeds covered by this Agreement, the sole duty of Intermediary shall be to forward, in a commercially timely manner, copies of the process or notice by certified mail to Taxpayer at its last known address appearing in the records of Intermediary.

(d) Taxpayer agrees to hold Intermediary and its affiliates and parent companies, and its and their officers, directors, shareholders, employees and agents, and their respective assigns, successors and legal representatives, harmless from and indemnify and defend them against any damage, loss, liability, cost, expense (including reasonable attorneys' fees and expenses), claim, action, judgment, fine, penalty or demand arising out of or in connection with: (i) the performance of Intermediary's obligations in accordance with the provisions of this Agreement, except for gross negligence or willful misconduct of Intermediary; (ii) a breach or alleged breach by Taxpayer of any representation, warranty, covenant or obligation in this Agreement; or (iii) any Sale Agreement or Purchase Agreement. This indemnification includes any cost or liability associated with Intermediary being found by a court to be a mortgagee in possession or owner or operator of the Relinquished Property within the meaning of CERCLA, or any other similar federal, state or local environmental laws or regulations. The foregoing indemnities in this paragraph shall survive the resignation of Intermediary and the termination of this Agreement.

(e) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INTERMEDIARY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

UNDER NO CIRCUMSTANCES SHALL INTERMEDIARY BE LIABLE TO TAXPAYER OR ANY OTHER PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFITS, PENALTIES, FINES OR ATTORNEYS' FEES, FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER THAT LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF

INTERMEDIARY. IN NO EVENT SHALL INTERMEDIARY'S LIABILITY TO TAXPAYER OR ANY OTHER PARTY FOR DAMAGES OF ANY KIND EXCEED THE AMOUNT OF FEES TAXPAYER HAS PAID TO INTERMEDIARY FOR THE SERVICES PERFORMED BY INTERMEDIARY UNDER THIS AGREEMENT WITHIN THE PERIOD TWELVE (12) MONTHS PRIOR TO THE ALLEGED CLAIM.

(f) If any dispute arises with respect to the payment, ownership or right or possession of Net Taxpayer Proceeds or Additional Proceeds, Intermediary is authorized to and may, in its sole discretion, retain in its possession, without liability to any party, all or any part of the proceeds until the dispute has been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America and time for appeal has expired and no appeal has been perfected. Intermediary shall be under no duty whatsoever to institute or defend any such proceedings, but Intermediary, in its sole discretion, may relinquish all or any part of the proceeds pursuant to an interpleader or other similar proceeding with a court of competent jurisdiction, at the expense of Taxpayer.

**8. Resignation of Intermediary:** Except upon Taxpayer's breach of this Agreement, Intermediary may not resign. Notwithstanding the foregoing, Intermediary may resign on notice to Taxpayer pursuant to Section 2 above, but such resignation shall not become effective with respect to transactions related to funds held in a Net Taxpayer Proceeds Account until such funds have been disbursed in accordance with the terms hereof.

**9. Fee:** As consideration for Intermediary's providing (or standing ready to provide) services to Taxpayer under this Agreement, and without regard to the successful consummation of any acquisition of Replacement Taxpayer Interests on behalf of Taxpayer, Intermediary shall be entitled to a fee as described on Exhibit B attached to this Agreement and to reimbursement for those costs described in Exhibit B. Intermediary, if not previously paid the fee to which it is entitled as provided on Exhibit B, shall be entitled to take such fee from funds deposited hereunder at the first time of deposit of such funds. Taxpayer shall pay any remaining outstanding amount within five (5) days of demand by Intermediary. Any such fees and costs if not paid by Taxpayer to Intermediary shall be withdrawn by Intermediary from the Additional Proceeds Account, and if there are not sufficient funds from the Additional Proceeds Account to pay Intermediary the full fee due hereunder, then, out of any of Taxpayer's Net Taxpayer Proceeds Accounts. Any fees or expenses of Intermediary that are not paid as provided for in this Agreement may be recouped from funds or other property held by Intermediary under this Agreement.

**10. Notices:** All notices and other communications required or permitted under this Agreement shall be in writing and, unless delivery instructions are specifically provided for elsewhere in this Agreement, delivered personally, by facsimile, by e-mail or by certified mail, U.S. mail or other courier, charges prepaid and directed to the party intended at the address set forth below, or at some other address as the party may designate by written notice in the above manner. The addresses are as follows:

**Intermediary:**  
e-LKE.com, LLC

1772 Platte Street  
Denver, CO 80202  
Phone: 303/302-1182  
Fax: 303/433-8959  
e-mail: brenta@e-lke.com  
Attn: Brent Abrahm

**Taxpayer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

email: \_\_\_\_\_

U.S. Taxpayer Identification Number:

**11. Time:** Time is of the essence in this Agreement.

**12. Applicable Law:** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the state of Colorado, without regard to its choice-of-laws rules. Any and all disputes arising out of or in connection with this Agreement shall be subject to the jurisdiction of the federal and state courts of the state of Colorado.

**13. Miscellaneous:**

(a) Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement. All attachments to this Agreement and referenced herein are automatically incorporated into and made a part of this Agreement.

(b) No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition of this Agreement. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) In the event of any suit or action to enforce or interpret this Agreement or any provision of this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees in addition to all other sums or relief allowed by law.

(d) This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the permitted assigns and successors of each party.

(e) The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or part, of any other provision of this Agreement. In the event that a court of competent jurisdiction determines that any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the valid or unenforceable term or provision were not a part of this Agreement.

(f) Notwithstanding any provision to the contrary in this Agreement, neither party shall be liable to the other party for failure to fulfill its obligations under this Agreement if that failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure or any other cause beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

(g) This Agreement sets forth the entire, final and complete understanding between the parties, relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral or implied, relevant to the subject matter of this Agreement made or existing before the Effective Date of this Agreement. Except as otherwise provided in this Agreement (including Section 3(a)(4)), no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties. Intermediary shall not make any oral or written statement or perform any act indicating that Taxpayer endorses or approves or has endorsed or approved Intermediary or its work products except as specifically provided in this subsection. Intermediary may not associate or in any way connect any name or trademark of Taxpayer with Intermediary's work products hereunder without Taxpayer's prior written approval. Subject to Taxpayer's prior review and prior written approval, Intermediary may promote Taxpayer's participation in Intermediary's services provided under this Agreement.

(h) This Agreement may be executed in any number of counterparts by facsimile or electronic signature, each of which shall be an original, but all such counterparts shall constitute one and the same instrument

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives to be effective as of the Effective Date.

e-LKE.com, LLC

By: \_\_\_\_\_  
Brent Abrahm, President

Taxpayer:

By: \_\_\_\_\_

## **EXHIBIT B**

### **Fees and Costs**

1. Intermediary shall be paid \$\_\_\_\_\_ for its services connected with the establishment of each separate Net Taxpayer Proceeds Account and the transactions associated with such account.
2. There shall be no charge for incoming or outgoing wire transfers, except that there shall be imposed a \$30 charge for instructions to stop a wire transfer.
3. Intermediary shall be reimbursed for direct out-of-pocket expenses (other than wire transfers) incurred in performing services hereunder at the request of Taxpayer, such as express mail charges.

0906544-03001



058674-03304



## **ONLINE SINGLE EXCHANGE AGREEMENT**

### **(With Qualified Intermediary)**

THIS ONLINE SINGLE EXCHANGE AGREEMENT (this "Agreement") is by and between \_\_\_\_\_ ("Taxpayer"), with an address of \_\_\_\_\_ and a United States Taxpayer Identification Number of \_\_\_\_\_, and e-LKE.com, LLC ("Intermediary"), 445 Union Blvd.

Suite 223, Lakewood, Colorado 80228

### **Recitals**

A. Taxpayer has entered or will enter into agreements ("Sale Agreements") with various parties ("Purchasers") in which Taxpayer agrees to sell and Purchasers agree to purchase Taxpayer's interests ("Relinquished Taxpayer Interests") in certain real or personal property that qualifies for tax-free treatment pursuant to the regulations under Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), with such real or personal property being hereinafter referred to as "Relinquished Property."

Taxpayer also has entered or will enter into agreements ("Purchase Agreements") with various parties ("Sellers") in which Taxpayer agrees to purchase and Sellers agree to sell interests ("Replacement Taxpayer Interests") in like-kind property that qualifies for tax-free treatment pursuant to the regulations under Code Section 1031, with such like-kind property hereinafter referred to as "Replacement Property."

B. Taxpayer desires to appoint Intermediary, acting as a "qualified intermediary" pursuant to Code Section 1031 and the regulations thereunder, to acquire Relinquished Taxpayer Interests, acquire Replacement Taxpayer Interests, convey Relinquished Taxpayer Interests to Purchasers and convey Replacement Taxpayer Interests to Taxpayer, in transactions qualifying as a deferred like-kind exchange under Code section 1031 and the applicable regulations.

C. Taxpayer desires to utilize Intermediary's World Wide Web site ("Intermediary's Site") to carry out and process online the like-kind exchange transaction contemplated by this Agreement.

### **Agreement**

In consideration of these premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Definitions:**

"Additional Proceeds" means any funds deposited into the Additional Proceeds Account pursuant to this Agreement.

"Additional Proceeds Account" means a non-restricted account created by Intermediary for the term of this Agreement, into which Additional Proceeds are deposited; on which interest or other earnings credited to Taxpayer pursuant to Section 6 below, and into

which Net Taxpayer Proceeds may, in circumstances consistent with Code section 1031 and applicable regulations, be payable pursuant to Section 3(a)(5).

“Earnings on Net Taxpayer Proceeds” means the interest or earnings on Net Taxpayer Proceeds.

“Exchange Period” means the period ending on the earlier of the 180th day after the day of the transfer of the first item of Relinquished Property or the due date (including extensions) for Taxpayer’s federal income tax return for the taxable year in which the first item of Relinquished Property is transferred.

“Identification Period” means the period ending on the date that is 45 days after the day of transfer of the first item of Relinquished Property.

“Net Taxpayer Proceeds” mean the amounts that Purchasers pay to Intermediary for Relinquished Taxpayer Interests.

“Net Taxpayer Proceeds Account” means a restricted account established by Intermediary on behalf of Taxpayer (which may be part of a deposit, trust or escrow account at the bank or other financial institution utilized by Intermediary (“Intermediary’s Bank”) to hold funds

of Taxpayer pursuant to this Agreement) for each category of Relinquished Property with respect to which Taxpayer desires to make a deferred like-kind exchange.

“Termination Date” means the earliest of: (i) the date on which Taxpayer receives the last of all Replacement Taxpayer Interests to which Taxpayer is entitled under this Agreement; (ii) if Taxpayer has not identified any Replacement Taxpayer Interests during the Identification Period, the next business day after the expiration of the Identification Period; (iii) the next business day after the expiration of the Exchange Period; or (iv) upon receipt by Intermediary of written notice signed by Taxpayer, advising that Intermediary will be unable to acquire any identified Replacement Taxpayer Interests due to the occurrence, after the end of the Identification Period, of a material and substantial contingency that relates to the deferred exchange, is provided for in writing and is beyond the control of Taxpayer and any disqualified person (as defined in Treas. Reg. section 1.1031(k)-1(k)) other than the person obligated to transfer the identified Replacement Taxpayer Interests to Taxpayer, all as interpreted strictly in accordance with Treas. Reg. section 1.103(k)-1(g)(6).

**2. Term:** The term of this Agreement shall begin on the Effective Date (as defined in Section 14 below) and end 45 days after the Termination Date. Notwithstanding termination of this Agreement, any representations, warranties and indemnities, as well as any obligations with respect to amounts owing to either party under this Agreement as of the Termination Date, shall survive termination of this Agreement.

**3. Net Taxpayer Proceeds Accounts and Additional Proceeds Account:**

**(a) Net Taxpayer Proceeds Accounts.**

(1) Intermediary shall establish a Net Taxpayer Proceeds Account for each category of Relinquished Property with respect to which Taxpayer wishes to effect a like-kind exchange. Intermediary shall designate a separate account name and number for each such Net Taxpayer Proceeds Account, using Taxpayer's name and the date of creation. Intermediary shall provide to Taxpayer, with respect to each Net Taxpayer Proceeds Account, a statement detailing deposits into and disbursements from each Net Taxpayer Proceeds Account, listing date of deposit or disbursement, payor/payee and amount. Such statement shall be made available to Taxpayer's authorized representatives on Intermediary's Site and shall be updated daily.

(2) Intermediary, through Intermediary's Bank, shall accept and deposit into each Net Taxpayer Proceeds Account all Net Taxpayer Proceeds received with respect to Relinquished Taxpayer Interests transferred with respect to that Net Taxpayer Proceeds Account. Intermediary also shall credit to each Net Taxpayer Proceeds Account, at the time of closing of the account, the interest or other earnings credited to Taxpayer pursuant to Section 6 below on the Net Taxpayer Proceeds contained in that Net Taxpayer Proceeds Account.

(3) Intermediary, through Intermediary's Bank, shall disburse Net Taxpayer Proceeds from a Net Taxpayer Proceeds Account for acquisition of Replacement Taxpayer Interests, as described in Section 5 below. Funds in the Net Proceeds Account shall be applied solely for the purposes of: (i) paying transactional expenses that relate to the transfer of Relinquished Taxpayer Interests or to the acquisition of Replacement Taxpayer Interests and appear under local standards in the typical closing statement as the responsibility of a buyer or seller (within the meaning of Treas. Reg. section 1.1031(k)-1(g)(7)); (ii) acquiring Replacement Taxpayer Interests in accordance with the applicable Purchase Agreement(s) (including making any required earnest money deposits); and (iii) subject to the conditions set forth in Section 3(a)(4) below, disbursement to Taxpayer or as Taxpayer may direct. Unless Taxpayer provides written instructions to Intermediary to the contrary, Taxpayer hereby authorizes Intermediary to disburse funds from the Net Proceeds Account in accordance with the provisions of this Section 3(a)(3) and Section 5 below, always subject to the conditions set forth in Section 3(a)(4) below.

(4) Each Net Taxpayer Proceeds Account shall be a restricted account, and Taxpayer shall have no right to pledge, borrow or otherwise obtain the benefits of Net Taxpayer Proceeds (including any interest or other earnings credited to Taxpayer pursuant to Section 6 below), except as provided in Section 5 below and to the extent not inconsistent with Treas. Reg. section

1.1031(k)-1(g)(6). This provision shall apply notwithstanding any inconsistent instruction given by Taxpayer to Intermediary on or prior to the Termination Date and notwithstanding any decision by Taxpayer not to pursue a deferred exchange or to abandon the transactions contemplated by this Agreement, and this provision shall not be amendable by the parties.

(5) Net Taxpayer Proceeds contained in a Net Taxpayer Proceeds Account that are not disbursed by Intermediary in accordance with Section 5(a) or (b) below and Earnings on Net Taxpayer Proceeds shall be transferred by Intermediary to the Additional Proceeds Account on the day following the Termination Date, but in no event sooner than permitted under Treas. Reg. section 1.1031(k)-1(g)(6).

(6) Any disbursement hereunder directed by Taxpayer shall (if otherwise permitted under the terms of this Agreement) be made by Intermediary's directing Intermediary's Bank to issue a fedwire transfer or check, as designated by Taxpayer in an electronic writing, in accordance with the procedures established in Intermediary's Site (a "Disbursement Authorization"). If a Disbursement Authorization requests disbursement of funds on the day the Disbursement Authorization is sent, and if the Disbursement Authorization is received by Intermediary before 12:00 p.m. noon, Central Time on the day that funds are directed to be disbursed, the Intermediary shall be obligated to initiate the wire transfer of such funds during the period that LaSalle Exchange Corporation, Intermediary's Bank,



may initiate wire transfers on the day that the Disbursement Authorization is received by Intermediary; if such a Disbursement Authorization is received by Intermediary after such time, then Intermediary shall use commercially reasonable efforts to initiate the wire transfer before the wire transfer deadline for that day, but it shall not be obligated to do so. Notwithstanding the foregoing, Intermediary shall not be required to initiate a wire transfer on the day directed by Taxpayer if that day is a bank holiday at LaSalle Exchange Corporation, Intermediary's Bank. Taxpayer in the Disbursement Authorization shall indicate Taxpayer's name and Net Taxpayer Proceeds Account number, Intermediary's Bank account name and number, the name and account number of the recipient, the name and ABA routing number of the recipient's bank and the amount to be transferred to the recipient. Intermediary is expressly authorized to rely conclusively on the Disbursement Authorization as the authorized instructions of Taxpayer, and on the accuracy of the content of such instructions, including the account numbers and ABA routing numbers identified in the Disbursement Authorization, which are the sole responsibility of Taxpayer, and Intermediary may process such instructions in reliance on the Disbursement Authorization. Intermediary shall forward any Disbursement Authorization to Intermediary's Bank immediately following receipt of the Disbursement Authorization.

**(b) Additional Proceeds Account.**

(1) Intermediary also shall establish an Additional Proceeds Account for Taxpayer. Intermediary shall designate a separate name and account number for the Additional Proceeds Account, using Taxpayer's name and the title "Additional Proceeds Account." Intermediary shall electronically make available to Taxpayer, on a monthly basis, a statement detailing deposits into and disbursements from the Additional Proceeds Account, listing date of transaction, payor/payee and amount.

(2) The portion of each check or wire transfer received by Intermediary that is designated by Taxpayer as Additional Proceeds shall be deposited by Intermediary into the Additional Proceeds Account. Intermediary shall deposit into the Additional Proceeds Account any interest or other earnings credited to Taxpayer pursuant to Section 6 below on Additional Proceeds, as well as uncommitted or unused Net Taxpayer Proceeds (in accordance with Section 3(a)(5)) above. Taxpayer may deposit additional funds into the Additional Proceeds Account from time to time to cover expected disbursements from the Additional Proceeds Account.

(3) Pursuant to Taxpayer's Disbursement Authorization, Intermediary, through Intermediary's Bank, shall disburse Additional Proceeds from the Additional Proceeds Account.

4. **Assignments of Rights:** For value received, Taxpayer hereby assigns to Intermediary, and Intermediary accepts assignment of, Taxpayer's rights, but not Taxpayer's obligations, with respect to Sale Agreements covered by this Agreement (as and when those Sales Agreements come into existence), and Intermediary shall notify each Purchaser of that assignment on or before the date of transfer of Relinquished Property to that Purchaser. For value received, Taxpayer hereby assigns to Intermediary, and Intermediary accepts assignment of, Taxpayer's rights, but not Taxpayer's obligations, with respect to Purchase Agreements covered by this Agreement (as and when those Purchase Agreements come into existence), and Intermediary shall notify each Seller of that assignment on or before the date of transfer of Replacement Property to Taxpayer. These assignments are solely for purposes of effecting deferred like-kind exchanges under Code section 1031 and the applicable regulations. Sale Agreements and Purchase Agreements shall be considered to be covered by this Agreement if deposit or disbursement of Net Taxpayer Proceeds into or out of a Net Taxpayer Proceeds Account is made with respect to them in accordance with this Agreement as of the time of transfer.

5. **Acquisition and Conveyance of Replacement Taxpayer Interests:**

(a) **Acquisition of Replacement Taxpayer Interests In General.**

(1) Intermediary shall acquire and transfer Replacement Taxpayer Interests in Replacement Property as provided in this Section 5 pursuant to Taxpayer's designations and assignments in accordance with Treas. Reg. section 1.1031(k)-1(g)(4).

(2) Replacement Property shall be paid for by Intermediary at the purchase price or prices, and upon such other terms and conditions, including but not limited to conditions of title, as specified in the applicable Purchase Agreements, and Replacement Taxpayer Interests shall be conveyed to Taxpayer in exchange for Relinquished Taxpayer Interests.

(3) Notwithstanding that Intermediary will not actually take title to Relinquished Property or Replacement Property, Intermediary shall be deemed to have taken title to and exchanged Relinquished Taxpayer Interests for Replacement Taxpayer Interests within the meaning of Treas. Reg. section 1.1031(k)-1(g)(4)(iv). The foregoing notwithstanding, Intermediary shall not be considered to hold title or to be a mortgagee in possession or owner or operator of Relinquished Property or Replacement Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other similar federal, state or local environmental laws or regulations, and Intermediary shall not be deemed at any time to acquire legal or equitable title to any Relinquished Property or Replacement Property.

**(b) Acquisition of Replacement Taxpayer Interests Within the Identification Period.**

(1) Pursuant to Taxpayer's instructions, Intermediary shall pay for Replacement Taxpayer Interests in Replacement Property received by Taxpayer within the Identification Period, using Net Taxpayer Proceeds deposited into the applicable Net Taxpayer Proceeds Account to the extent of those funds. Pursuant to Taxpayer's instructions, Intermediary shall use Additional Proceeds to pay for Replacement Taxpayer Interests to the extent that the balance in the applicable Net Taxpayer Proceeds Account is insufficient to pay for those Replacement Taxpayer Interests.

(2) Any Net Taxpayer Proceeds that are unused under the procedure set forth in this Section 5(b) shall be subject to commitment, within the Identification Period, under the procedures set forth in Section 5(c) below.

**(c) Acquisition of Replacement Taxpayer Interests After the Identification Period.**

(1) In addition to the Replacement Taxpayer Interests acquired by Intermediary pursuant to Section 5(b) above, Taxpayer shall have the right (but not the obligation) to identify, in accordance with the identification rules contained in Treas. Reg. section 1.1031(k)-1(c), Replacement Property in which Taxpayer desires to acquire Replacement Taxpayer Interests, at any time and from time to time during an Identification Period, to be paid for by

Intermediary with Net Taxpayer Proceeds from the applicable Net Taxpayer Proceeds Account within the Exchange Period.

(2) In the event that Taxpayer identifies, during the Identification Period, Replacement Property in which Taxpayer desires to acquire Replacement Taxpayer Interests, Intermediary shall pay for those Replacement Taxpayer Interests received by Taxpayer within the applicable Exchange Period as provided in the applicable Purchase Agreements, using Net Taxpayer Proceeds from the applicable Net Taxpayer Proceeds Account(s) to pay for the Replacement Taxpayer Interests, and using Additional Proceeds to pay for Replacement Taxpayer Interests to the extent that the balance in the applicable Net Taxpayer Proceeds Account is insufficient to pay for those Replacement Taxpayer Interests.

**6. Interest or Other Earnings on Net Taxpayer Proceeds and Additional**

**Proceeds:** Intermediary shall credit to Taxpayer interest or other earnings, both on the balance in the Net Taxpayer Proceeds Account and on the balance in the Additional Proceeds Account. Intermediary shall invest and reinvest the balance in the Net Taxpayer Proceeds Account and the balance in the Additional Proceeds Account at an interest rate computed at the annual rate set forth on Exhibit A attached to this Agreement, on those funds while actually held by Intermediary's Bank on behalf of Taxpayer. Intermediary shall not be liable for interest or other earnings on the balance in the Net Taxpayer Proceeds Account or the balance in the Additional Proceeds Account, except as specifically

provided pursuant to this Section 6. Taxpayer and Intermediary hereby acknowledge and agree that, for federal income tax purposes, any interest or other earnings credited to Taxpayer on funds in a Taxpayer Net Proceeds Account or in an Additional Proceeds Account will be income attributed to Taxpayer, and that Intermediary will report to the Internal Revenue Service any such income. Under penalties of perjury, Taxpayer hereby certifies that: (i) Taxpayer is not a "foreign person" within the meaning of Code section 1445 and the applicable regulations; (ii) Taxpayer's address is as set forth in Section 10 below; (iii) Taxpayer's United States Taxpayer Identification Number is as set forth in Section 10 below; and (iv) Taxpayer is not subject to backup withholding.

## **7. Relationship of Parties and Indemnification:**

- (a) Taxpayer intends that the transactions contemplated by this Agreement will qualify for favorable treatment under Section 1031 of the Code and the regulations thereunder. However, Taxpayer acknowledges and agrees that Intermediary shall not be responsible for any particular tax consequences (including any responsibility for filing and the payment of any tax) resulting from Intermediary's activities or responsibilities under this Agreement, and that Intermediary makes no warranties or representations that its actions, or any exchanges made pursuant to this Agreement, are in compliance with the provisions of Code section 1031 or any other provisions of the Code or any other applicable laws or regulations. Notwithstanding any provision of this Agreement to the contrary, Intermediary shall not be in default under this

Agreement and shall not be liable for any damages, losses, costs or expenses incurred by Taxpayer if: (i) Intermediary fails to take any steps to locate, identify or negotiate for the acquisition of Replacement Taxpayer Interests, a Purchase Agreement or financing to acquire Replacement Taxpayer Interests; (ii) any Replacement Taxpayer Interests fail to qualify as "like-kind" property for purposes of Code section 1031; or (iii) the exchange transactions contemplated, attempted or consummated by Taxpayer otherwise fail, for any reason, to afford Taxpayer the benefits of Code section 1031, unless the failure is caused by the gross negligence or willful misconduct of Intermediary. **Taxpayer represents and warrants to Intermediary that Taxpayer has consulted with and is relying on its own advisors with regard to the legal and tax consequences of the transactions contemplated by this Agreement. Taxpayer acknowledges that it is not relying upon any representation of or information obtained from Intermediary or any of its agents with respect to such legal or tax consequences, and that Intermediary has given no tax or other legal advice to Taxpayer with respect to any matter. Intermediary shall have no responsibility for any of the tax incidences of the transactions contemplated by this Agreement, including compliance with any timing requirements under this Agreement or under Code section 1031 or the applicable regulations. Taxpayer represents and warrants to Intermediary that any Replacement Taxpayer Interests identified by Taxpayer are of "like**



**kind," within the meaning of Code section 1031, with the applicable Relinquished Taxpayer Interests and to be held for a purpose qualifying under Code section 1031.**

(b) Taxpayer acknowledges and agrees that Intermediary is acting, pursuant to this Agreement, solely as Taxpayer's agent for the limited purpose of facilitating deferred like-kind exchanges by Taxpayer. Intermediary's duties are only such as are specifically provided in this Agreement, and Intermediary shall incur no liability whatsoever to Taxpayer or any other party, except for gross negligence or willful misconduct in carrying out those duties. Intermediary shall have no responsibility under this Agreement other than to follow in good faith the instructions provided by Taxpayer consistent with the provisions of this Agreement. Whenever reference is made in this Agreement to Intermediary's status as Taxpayer's agent, the parties intend that relationship to exist as a matter of statutory and common law to the fullest extent possible, but in no event shall the agency relationship be construed to extend beyond that which is permissible under the safe harbor for deferred like-kind exchanges involving qualified intermediaries described in Treas. Reg. section 1.1031(k)-1(g)(4). In connection with any demand, claim or complaint made upon Intermediary, Intermediary may notify such person or persons that it deems appropriate that it is acting under this Agreement solely as Taxpayer's agent for the limited purpose of facilitating deferred like-kind exchanges by Taxpayer. Intermediary may from time to time, with or without notice to Taxpayer or any other person, appoint a nominee or agent to perform any or all of its obligations under

this Agreement. Notwithstanding that appointment, Intermediary shall be responsible for any such nominee or agent, and shall remain liable for the performance of its obligations under this Agreement.

(c) Taxpayer represents and warrants to Intermediary that Taxpayer is duly authorized to enter into this Agreement and to consummate all of the transactions contemplated by this Agreement. Intermediary shall be entitled to rely in good faith upon any electronic or non-electronic writing, telegram, telex or teletype message, resolution, notice, consent, waiver, certificate, letter, cablegram, statement, order, request or other document or conversation by telephone or otherwise reasonably believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper person or persons. Upon request, Taxpayer shall provide Intermediary with a copy of any document referenced above. Intermediary shall not be required to inquire into the propriety of any direction given under this Agreement. Intermediary shall be fully justified in failing or refusing to take any action hereunder with respect to any conflicting demands or claims (including any demands or claims conflicting with any provision of this Agreement) of which Intermediary may become aware regarding the rights of any of the parties to this Agreement or of any money, property or instruments affected by this Agreement unless Intermediary shall first be indemnified or furnished with sufficient funds to its reasonable satisfaction by Taxpayer against any and all liability and expense that may be incurred by Intermediary by reason of taking or continuing to take any such action. Intermediary shall not be obligated to pay any money under this Agreement

or to prosecute or defend any legal proceeding involving this Agreement or any proceeds covered by this Agreement unless it shall elect to do so and be furnished by Taxpayer with sufficient funds or be indemnified to its reasonable satisfaction. If Intermediary is served with process or notice of legal proceedings or any other matter concerning this Agreement or any proceeds covered by this Agreement, the sole duty of Intermediary shall be to forward, in a commercially timely manner, copies of the process or notice by certified mail to Taxpayer at its last known address appearing in the records of Intermediary.

(d) Taxpayer agrees to hold Intermediary and its affiliates and parent companies, and its and their officers, directors, shareholders, employees and agents, and their respective assigns, successors and legal representatives, harmless from and indemnify and defend them against any damage, loss, liability, cost, expense (including reasonable attorneys' fees and expenses), claim, action, judgment, fine, penalty or demand arising out of or in connection with: (i) the performance of Intermediary's obligations in accordance with the provisions of this Agreement, except for gross negligence or willful misconduct of Intermediary; (ii) a breach or alleged breach by Taxpayer of any representation, warranty, covenant or obligation in this Agreement; or (iii) any Sale Agreement or Purchase Agreement. This indemnification includes any cost or liability associated with Intermediary being found by a court to be a mortgagee in possession or owner or operator of the Relinquished Property within the meaning of CERCLA, or any other similar federal, state or local environmental laws or regulations. The foregoing indemnities in this

paragraph shall survive the resignation of Intermediary and the termination of this Agreement.

(e) Intermediary shall have no responsibility or liability with respect to delays or loss attributable to internet downtime that occurs for any reason.

(f) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INTERMEDIARY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. UNDER NO CIRCUMSTANCES SHALL INTERMEDIARY BE LIABLE TO TAXPAYER OR ANY OTHER PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFITS, PENALTIES, FINES OR ATTORNEYS' FEES, FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER THAT LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INTERMEDIARY. IN NO EVENT SHALL INTERMEDIARY'S LIABILITY TO TAXPAYER OR ANY OTHER PARTY FOR DAMAGES OF ANY KIND EXCEED THE AMOUNT OF FEES TAXPAYER HAS PAID TO INTERMEDIARY FOR THE

SERVICES PERFORMED BY INTERMEDIARY UNDER THIS AGREEMENT  
WITHIN THE PERIOD TWELVE (12) MONTHS PRIOR TO THE ALLEGED CLAIM.

(g) If any dispute arises with respect to the payment, ownership or right or possession of Net Taxpayer Proceeds or Additional Proceeds, Intermediary is authorized to and may, in its sole discretion, retain in its possession, without liability to any party, all or any part of the proceeds until the dispute has been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America and time for appeal has expired and no appeal has been perfected. Intermediary shall be under no duty whatsoever to institute or defend any such proceedings, but Intermediary, in its sole discretion, may relinquish all or any part of the proceeds pursuant to an interpleader or other similar proceeding with a court of competent jurisdiction, at the expense of Taxpayer.

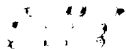
**8. Resignation of Intermediary:** Except upon Taxpayer's breach of this Agreement, Intermediary may not resign. Notwithstanding the foregoing, Intermediary may resign at any time by giving notice to Taxpayer pursuant to Section 2 above, but such resignation shall not become effective with respect to transactions related to funds held in a Net Taxpayer Proceeds Account until such funds have been disbursed in accordance with the terms hereof.

9. **Fee:** As consideration for Intermediary's providing (or standing ready to provide) services to Taxpayer under this Agreement, and without regard to the successful consummation of any acquisition of Replacement Taxpayer Interests on behalf of Taxpayer, Intermediary shall be entitled to a fee as described on Exhibit A attached to this Agreement and to reimbursement for those costs described in Exhibit A. Intermediary, if not previously paid the fee to which it is entitled as provided on Exhibit A, shall be entitled to take such fee from funds deposited hereunder at the first time of deposit of such funds. Taxpayer shall pay any remaining outstanding amount within five (5) days of demand by Intermediary. Any such fees and costs if not paid by Taxpayer to Intermediary shall be withdrawn by Intermediary from the Additional Proceeds Account, and if there are not sufficient funds from the Additional Proceeds Account to pay Intermediary the full fee due hereunder, then out of any of Taxpayer's Net Taxpayer Proceeds Accounts. Any fees or expenses of Intermediary that are not paid as provided for in this Agreement may be recouped from funds or other property held by Intermediary under this Agreement.

10. **Notices:** All notices and other communications required or permitted under this Agreement shall be in writing and, unless delivery instructions are specifically provided for elsewhere in this Agreement, delivered personally, by facsimile, by e-mail or by certified mail, U.S. mail or other courier, charges prepaid and directed to the party intended at the address set forth below, or at some other address as the party may designate by written notice in the above manner. The addresses are as follows:

**Intermediary:**

e-LKE.com, LLC



445 Union Blvd., Suite 223

Lakewood, Colorado 80228

Phone: (720) 963-0113

Fax: (720) 963-0116

e-mail: info@e-lke.com

Attn: Brent Abrahm

**Taxpayer:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

U.S. Taxpayer Identification Number: \_\_\_\_\_

**11. Time:** Time is of the essence in this Agreement.

**12. Applicable Law:** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the state of Colorado, without regard to its choice-of-laws rules. Any and all disputes arising out of or in connection with this Agreement shall be subject to the jurisdiction of the federal and state courts of the state of Colorado.

### 13. Miscellaneous:

(a) Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

All attachments to this Agreement and referenced herein are automatically incorporated into and made a part of this Agreement.

(b) No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition of this Agreement. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) In the event of any suit or action to enforce or interpret this Agreement or any provision of this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees in addition to all other sums or relief allowed by law.

(d) This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the permitted assigns and successors of each party.



(e) The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or part, of any other provision of this Agreement. In the event that a court of competent jurisdiction determines that any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the valid or unenforceable term or provision were not a part of this Agreement.

(f) Notwithstanding any provision to the contrary in this Agreement, neither party shall be liable to the other party for failure to fulfill its obligations under this Agreement if that failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure or any other cause beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

(g) This Agreement sets forth the entire, final and complete understanding between the parties, relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral or implied, relevant to the subject matter of this Agreement made or existing before the Effective Date of this Agreement. Except as otherwise provided in this Agreement (including Section 3(a)(4)), no waiver or modification of any of the terms

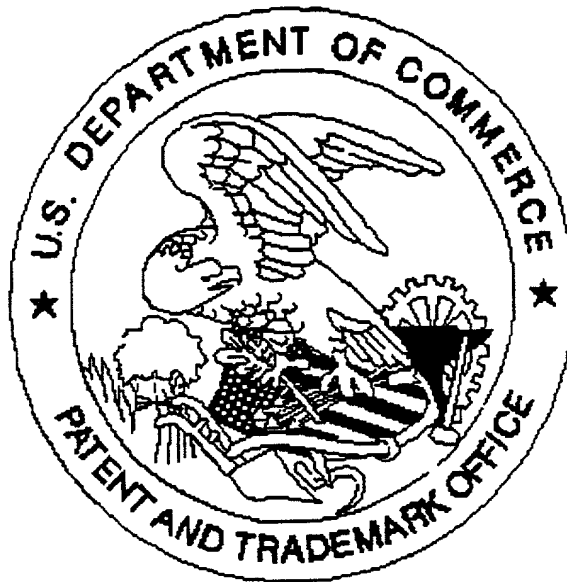
or conditions of this Agreement shall be effective unless in writing and signed by both parties. Notwithstanding the foregoing, any use of Intermediary's Site to carry out or process online the transactions contemplated by this Agreement shall be subject to the then current Terms and Conditions of Use for Intermediary's Site (the "Site Terms") governing online exchange transactions. To the extent of any conflict between the terms and conditions of this Agreement and the terms and conditions of the Site Terms, the terms and conditions of the Site Terms shall be controlling.

**14. Electronic Execution/Effective Date:** It is the express intention of Intermediary and Taxpayer to create a valid and legally binding agreement by executing this Agreement by means of electronic processes over the Internet, as prescribed below. Intermediary and Taxpayer hereby each consent to the formation of this Agreement by means of electronic processes over the Internet in the following manner. This Agreement shall only be effective, enforceable and binding upon Intermediary and Taxpayer upon the date that all of the following conditions have been satisfied in exactly the manner prescribed below (the "Effective Date"): (a) Taxpayer shall have offered to accept this Agreement by the affirmative action of its representative ("Taxpayer's Authorized Representative") typing the words "Taxpayer offers to enter into this Agreement" and clicking on the box below marked "SEND" (referred to as "Taxpayer's Offer"); (b) Intermediary shall have returned to Taxpayer's Authorized Representative within twenty-four (24) hours of receipt of Taxpayer's Offer an electronic message, an exact copy of this Agreement, including Taxpayer's Offer, together with the following message inserted below Taxpayer's Offer: "Intermediary hereby accepts Taxpayer's offer to enter into the Agreement as a valid and

with the following message inserted below Taxpayer's Offer: "Intermediary hereby accepts Taxpayer's offer to enter into the Agreement as a valid and legally binding agreement on Taxpayer and Intermediary, subject to Taxpayer's initiating an exchange transaction hereunder;" and (c) the Taxpayer shall have initiated an exchange transaction hereunder. Intermediary and Taxpayer hereby waive any rights at law or otherwise to assert as a defense to the enforceability of this Agreement, the statute of frauds or any other law, regulation, rule or legal theory that otherwise requires that a contract be in fixed and tangible written form and signed by the parties thereto or be accepted in electronic form in any other manner, in order to be enforceable.

Notwithstanding the foregoing, Intermediary and Taxpayer acknowledge and agree that this Agreement may be evidenced by a paper copy signed by a duly authorized representative of each of the parties.

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